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Wednesday, November 27, 2002

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In re

VINCENT M. DEDOMINICO, No. 01-10563

[Debtor](#) (s).

LAURA GOMEZ EASTWOOD,

[Plaintiff](#) (s),

v. A.P. No. 01-1077

VINCENT M. DEDOMENICO,

[Defendant](#) (s).

Memorandum on Motion for Summary Judgment

Debtor and defendant Vincent DeDomenico is the former husband of plaintiff Laura Eastwood. When they separated in 1992, they entered into an agreement "with respect to allocation of respective property rights and certain pressing needs for money." Under that agreement, Vincent agreed to pay Laura \$10,000.00 per month until formal dissolution proceedings were commenced by either party, when "the court having jurisdiction over such proceedings shall make any further determination regarding support."

Between the signing of the agreement in July of 1992 and commencement of dissolution proceedings in 1994, Vincent paid only \$20,000.00 of the \$190,000.00 which he was obligated to pay. In August, 1995, the state court entered an order pursuant to the

agreement of the parties which divided the community property and contained an additional provision, separate and apart from the equalizing provisions:

One Hundred Seventy Thousand Dollars (\$170,000.00) as and for a non-taxable property division to [Laura]. [Vincent] shall pay to [Laura] the sum of \$170,000.00 to [Laura] forthwith

The evidence is overwhelming that this was the unpaid support, denominated as a further property settlement for tax purposes. Obligations for spousal support are nondischargeable pursuant to § 523(a)(5) of the Code. The designation of an item in a settlement or decree as support or division of property is not dispositive. In re Seixas, 239 B.R. 398, 402 (9th Cir. BAP 1999). Even an obligation designated as a property settlement may actually be a support obligation. In re Gianakas, 917 F.2d 759, 763 (3rd Cir. 1990). Laura accordingly seeks summary judgment that this portion of the state decree is not dischargeable.

Vincent has filed a declaration which states: "At no time did I agree to support payments and at no time were support payments ordered." He argues that this declaration creates a triable issue of fact and precludes summary judgment against him. The court disagrees.


There is an overwhelming amount of evidence, including Vincent's own testimony, which clearly establishes that the \$170,000.00 "property division" was in fact the unpaid balance of the \$10,000.00 monthly obligation created by the 1992 agreement. That agreement clearly referred to "certain pressing needs for money" and expressly provided that it was to continue until legal proceedings were commenced, when a court might make further determination regarding support. There is no reasonable interpretation of this agreement other than an agreement to pay support.

Vincent argues that his declaration that he did not agree to support payments creates a triable issue of fact and precludes summary judgment. However, where, as here, the trial would be a bench trial without a jury, the court may summarily interpret and evaluate evidence in order to derive legal conclusions. Schwarzer, *The Analysis and Decisions of Summary Judgment Motions* (Federal Judicial Center 1991), p. 39.

Notwithstanding Vincent's denial, the court has evaluated the 1992 agreement and reaches the conclusion that it was an agreement to pay support. It is undisputed that Vincent paid only \$20,000.00 of the \$190,000.00 he owed in support pursuant to that agreement, and that the \$170,000.00 "non-taxable property division" in the 1995 court order was the same non-dischargeable support obligation. Accordingly, Laura's motion for summary judgment will be granted.

Counsel for Laura shall submit an appropriate form of order granting her motion for summary judgment and a separate form of judgment, which shall include her costs of suit.

Dated: November 27, 2002

Alan Jaroslovsky
U.S. [Bankruptcy Judge](#) 

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